the promisee. In none of them were there, as here, plans and specifications to be complied with, of which compliance others could judge as well as the promisee. The case was likened to *Richison* v. *Mead*, 11 S. Dak. 639, 80 N. W. 131. See MECHEM ON SALE, §§663, et seq.

DAMAGES—SALE—DUTY TO MINIMIZE LOSS.—An action was brought to recover for the price of coal sold. Defendant by way of counter-claim showed that plaintiff, after agreeing to deliver coal on sixty days' credit, had wilfully refused to deliver any more on credit, and defendant sought to be allowed the difference between the contract price and the market price, which was considerably higher. To defeat the counter-claim, the plaintiff offered to show that some thirty days after refusing to supply the coal on credit, it had offered to supply it for cash at less than the contract price, the reduction being equal to interest upon the contract price for sixty days. *Held*, that such offer did not defeat the counter-claim. *Coxe* v. *Anoka Waterworks, etc., Co.* (1902), — Minn. — , 91 N. W. Rep. 265.

A substantially contrary result was reached in *Lawrence* v. *Porter*, 63 Fed. Rep. 62, 11 C. C. A. 27, 26 L. R. A. 167, Mechem's Cases on Damages, 326, where it was held that the buyer's duty to minimize his loss required him to buy for cash of the defaulting seller rather than to buy for a higher price of other parties. Reliance was there placed upon *Warren* v. *Stoddart*, 105 U. S. 224. The Minnesota court repudiates *Lawrence* v. *Porter*, because "it entirely abrogates the contract as made by the parties, and forces upon them another and wholly different one, made by the court. It enables one of the parties to escape a proper liability for a deliberate and indefensible violation of a bargain he had made, and allows a court to arbitrarily say that the value of a certain specified period of credit to a vendee is simply the interest he might have to pay to secure cash to take the place of the credit he has bargained for." Notwithstanding this criticism, however, the doctrine of *Lawrence* v. *Porter*, is well supported by many analogies in the law. See MECHEM ON SALES, § 1754, 1755 and notes.

MANDAMUS—JURISDICTION TO ISSUE WRIT AGAINST THE GOVERNOR.—A state statute declared that, immediately upon its going into effect, "the governor shall appoint" a board of commissioners. The validity of the act was established, but the governor refused to make the appointment. *Held*, that the court had jurisdiction to issue mandamus to compel the appointment. *State* v. *Savage*, (1902), — Neb. — , 90 N. W. Rep. 898.

The power to issue the writ of mandamus against the governor of a state has been much discussed and frequently adjudicated. (See MECHEM ON PUB. OFF. §§ 954-956.) It is everywhere conceded that no such jurisdiction exists where the performance of the act is one resting in his discretion, but where a plain duty of a ministerial nature is positively imposed upon the governor by law, it is held by many courts that the writ should issue. Among these courts, is the supreme court of Nebraska. *State* v. *Savage*, supra; *State* v. *Thayer*, 31 Neb. 82. The cases upon this question are fully collated in notes to 33 Am. Dec. 661; 31 Am. St. Rep. 294.

MANDAMUS AGAINST OFFICER—ABATEMENT BY CHANGE OF OFFICER.—Plaintiff brought an action against three certain persons, "loan commissioners of the territory of Arizona," to compel the refunding of certain bonds. Pending the proceedings, there was a complete change in the *personnel* of the commission, and this fact was pleaded as a bar to the issuing of the writ. *Held*, that the action did not thereby abate, and that the writ might issue against the present commission. *Murphy* v. *Utter*, (1902), — U. S. —, 22 Sup. Ct. Rep. 776.

The question when a suit against an individual in his official capacity abates by his retirement from office has been discussed in a number of cases before the supreme court, and a distinction taken between applications for a mandamus against the head of a department or bureau for a personal delinquency, and those against a continuing municipal board where there is a continuing duty and the delinquency is that of the board in its corporate capacity.

In the *first* class of cases, it is held that the proceeding abates by the death, resignation or other retirement of the officer: *The Secretary* v. *McGarrahan*, 9 Wall. (U. S.) 298, 19 L. ed. 579; *United States* v. *Boutwell*, 17 Wall. 604, 21 L. ed 721; *Warner Valley Stock Co.* v. *Smith*, 165 U. S. 28, 41 L. ed. 621, 17 Sup. Ct. Rep. 225; *United States* v. *Butterworth*, 169 U. S. 600, 42 L. ed. 873, 18 Sup. Ct. Rep. 441. See also *United States* v. *Chandler*, 122 U. S. 643, 30 L. ed. 1244; *United States* v. *Lamont*, 155 U. S. 303, 39 L. ed. 160, 15 Sup. Ct. Rep. 97; *United States* v. *Lochren*, 164 U. S. 701, 41 L. ed. 1181, 17 Sup. Ct, Rep. 1001. To remedy certain of the difficulties so arising Congress in 1899, passed an act (30 Stat. at L. 822, ch. 121) to prevent the abatement of such actions. In the *second* class of cases, the proceeding does not abate but "may be commenced with one set of officers, and terminate with another, the latter being bound by the judgment." *Thompson* v. *United States*, 103 U. S. 480, 26 L. ed. 521; *Leavenworth County* v. *Sellew*, 99 U. S. 624, 25 L. ed. 333. See also *People* v. *Champion*, 16 Johns. (N. Y.) 61; *People* v. *Collins*, 19 Wend. (N, Y.) 56; *Re Parker*, 131 U. S. 221, 33 L. ed. 123, 9 Sup. Ct. Rep. 708.

MASTER AND SERVANT—ACTS WITHIN THE SCOPE OF THE EMPLOYMENT.—Defendant employed a servant to drag bales of cotton from the sidewalk into his warehouse, and for this purpose provided him with a short iron hook. While coming out of the warehouse, the servant saw some boys playing on and around the bales, and made a motion as if to throw the hook at them, in order to frighten them away. The hook slipped from his hand and destroyed the eye of the plaintiff, a boy standing near by on the sidewalk, but who was not on the bales or making any attempt to trespass upon the defendant's property. In an action to recover damages from the master for this act of the servant, *Held*, that the defendant was not liable. *Guille* v. *Campbell*, (1901) 200 Pa. 119, 49 Atl. Rep. 938, 55 L. R. A. 111.

The question, of course, was whether the act of the servant was within the scope of his employment. It had neither been authorized nor contemplated by the master. Was it incident to or in furtherance of the duty the servant was authorized to perform? It did not appear that any of the boys were in any way obstructing the servant or interfering with the discharge of his duty. It was true that the injury had been done with an instrument provided by the master but it was provided for an entirely different purpose. "The act of violence by which the injury was occasioned was not done in execution of the authority given, but was quite beyond it, and must be regarded as the unauthorized act of the servant, for which he himself and not the defendant must be answerable. Whether his action was simply careless, or whether it was malicious, it was his own, and was not an incident to the authority granted."

MASTER AND SERVANT— CONTRACT TO EMPLOY—DUTY OF MASTER TO GIVE WORK AS WELL AS PAY WAGES.—Plaintiff and defendants entered into a written contract whereby the defendants agreed "to continue to engage and employ the plaintiff as their servant and representative salesman" for four years, and to pay him an annual salary in monthly instalments. The plaintiff agreed "to devote his whole time to the business" of the defendants, and "to faithfully serve them as heretofore," After serving them for some time, plaintiff was notified by the defendants that although he would still be in their employ, and paid as usual, he would not after that day "be required to perform any duties." He sued to recover damages for not giving him work, and for not permitting him to continue to represent them as their salesman. *Held*, that the action could not be maintained. *Turner* v. *Sawdon* [1901] 2 K. B, 653.

The opinion of the majority of the Court of Appeal was that the contract amounted simply to an undertaking on the part of defendants to keep or retain plaintiff as their employee, and to pay him the stipulated wages—both of which they had done—but did not involve any further undertaking that they would also give him work to do, or permit him to work. The